

Amendment No. 1 to SB2627

Cooper
Signature of Sponsor

AMEND Senate Bill No. 2627*

House Bill No. 2919

by deleting in its entirety all language following the enacting clause, and by substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 104, is amended by adding the following as a new, appropriately designated part:

§ 68-104-201. The intent of this part is to establish a self-funded licensing program for display fireworks, pyrotechnic, and flame effect exhibitors and a certification program for individuals conducting fireworks displays, proximate pyrotechnic displays, and flame effect displays. The purpose of such programs shall be to ensure a level of competence that promotes the safety of the viewing public as well as the safety of pyrotechnic and fireworks personnel. It is not the intent of this part to regulate Class C common fireworks (1.4G consumer fireworks as designated in 49 C.F.R. § 173.52) or consumer fireworks as described by National Fire Protection Association (NFPA) standards, except as those types of fireworks may be used by an operator in a display regulated by this part.

§ 68-104-202. As used in this part, unless the context otherwise requires:

(1) "Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use;

(2) "Certified outdoor display operator" means an individual, who by experience, training, and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability

for safely assembling, discharging, and supervising of outdoor displays of display fireworks in accordance with NFPA 1123, 2001 edition;

(3) “Certified flame effect operator” means an individual, who by experience, training, and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising flame effects in accordance with this part and current NFPA 160, 2001 edition;

(4) “Certified proximate pyrotechnic operator” means an individual, who by experience, training, and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising indoor pyrotechnics, indoor pyrotechnic materials used outdoors, or proximate displays of 1.4G or 1.4S fireworks, as defined by 49 C.F.R. § 173.52, or articles pyrotechnic in accordance with NFPA 1126, 2001 edition;

(5) “Display fireworks” means 1.3G fireworks (formerly D.O.T. Class B) consistent with 49 C.F.R. § 173.52. subject to NFPA 1123, 2000 edition and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation;

(6) “Event” means any function or gathering at which there will be a fireworks display or pyrotechnic display or flame effect display; however, if a function or gathering lasts more than one (1) day, then each day is deemed to be a separate event;

(7) “Flame effect” means the combustion of an inflammable solid, liquid, or gas to produce thermal, physical, visual, or audible phenomena in accordance with NFPA 160, 2001 edition;

(8) “Flame effect display” means the use of flame effects before an audience in accordance with NFPA 160, 2001 edition;

(9) “Indoor display” means a proximate pyrotechnic display inside a building;

(10) “Licensed exhibitor” means a sole proprietor, partnership, corporation, company, firm, or other entity licensed under this part to perform or provide firework or pyrotechnic materials for outdoor fireworks displays, proximate pyrotechnic displays or flame effect displays;

(11) “Outdoor fireworks display” means a presentation of display fireworks for a public or private gathering in accordance with NFPA 1123, 2000 edition;

(12) “Proximate pyrotechnics” means pyrotechnic devices for professional use only, used outdoors or indoors in accordance with NFPA 1126, 2001 edition, as 1.4G or 1.4S fireworks, as defined by 49 C.F.R. § 173.52, or articles pyrotechnic. Proximate pyrotechnics are similar to consumer fireworks in chemical composition and construction but not intended for consumer use;

(13) “Proximate pyrotechnic display” means the use of pyrotechnic devices and materials, 1.4G or 1.4S firework, as defined by 49 C.F.R. § 173.52, or articles pyrotechnic when any portion of the audience is closer than permitted by NFPA 1123, 2000 edition, and NFPA 1126, 2001 edition; and

(14) “Sponsor” means any person or organization that contracts with a licensed exhibitor or certified operator to perform a fireworks display, proximate pyrotechnic display or flame effect display.

§ 68-104-203.

(a) Unless otherwise exempted by this part, an individual or entity must be a licensed exhibitor to perform an outdoor fireworks display, indoor or outdoor proximate pyrotechnic display, or an indoor or outdoor display using flame effects, or to supply display fireworks, indoor or outdoor proximate pyrotechnics, or flame effect materials for display purposes.

(b) No person shall be eligible for registration as a licensed exhibitor who is not at least twenty-one (21) years of age.

(c) No person shall be eligible for registration as a licensed exhibitor who has been convicted of or pleaded guilty or *nolo contendere* to any state or federal felony. In the case of a business entity seeking a license, no officer or member of its governing board may have been convicted of or pleaded guilty or *nolo contendere* to any state or federal felony.

(d) Applications for registration as a licensed exhibitor shall be in writing upon a form furnished by the state fire marshal and shall be accompanied by a non-refundable application fee. If the application is satisfactory to the state fire marshal, then the state fire marshal may issue a registration to the applicant upon receipt of a registration fee.

(e) Each person applying for registration as a licensed exhibitor shall provide proof of and maintain a current liability insurance policy, which includes coverage for bodily injury and property damage, in the minimum amount of one million dollars (\$1,000,000) during all fireworks, pyrotechnic, and flame effect displays for the use and benefit of any person who may be injured or aggrieved by a wrongful act or omission of any employee, servant, officer, or agent in the conduct of business of the exhibitor, or the exhibitor itself. If the insurance policy ceases to be in effect, the exhibitor's license shall become invalid. This

requirement shall not be construed so as to require employees and/or certified operators to maintain such insurance coverage.

§ 68-104-204.

(a) Unless otherwise exempted by this part, no individual shall conduct fireworks displays, proximate pyrotechnics displays, or flame effect displays unless the person is certified as an operator by the state fire marshal.

(b) An applicant for certification as an operator must meet the following requirements for any area in which certification is desired:

(1) Certified outdoor fireworks display operator: The individual must pass a written examination that tests outdoor display operator knowledge, approved by the state fire marshal, pay any applicable examination fee, and pay a certification fee to be set by rule by the state fire marshal;

(2) Certified proximate pyrotechnic display operator: The individual must pass a written examination that tests pyrotechnic special effects operator knowledge, approved by the state fire marshal, pay any applicable examination fee, and pay a certification fee to be set by rule by the state fire marshal; and

(3) Certified flame effect display operator: The individual must pass a written examination that tests flame effect operator knowledge, approved by the state fire marshal, pay any applicable examination fee, and pay a certification fee to be set by rule by the state fire marshal.

(c) No person shall be eligible for registration as an operator who is not at least twenty-one (21) years of age.

(d) No person shall be eligible for certification as an operator who has been convicted of or pleaded guilty or *nolo contendere* to any state or federal felony.

(e) Applications for certification as an operator shall be in writing upon a form furnished by the state fire marshal and shall be accompanied by a non-refundable application fee.

(f) If an applicant applies for more than one (1) certification, then the applicant may take the test for any or all certifications and pay a certification fee to be set by rule by the state fire marshal.

(g) The state fire marshal shall establish the scope and type of examinations required by this section. The state fire marshal may administer the examination or may enter into an agreement with a testing service or organization. The tests may be administered at a specific location or time.

§ 68-104-205.

(a) The state fire marshal may refuse to grant, or may suspend, revoke or refuse to renew any registration or certification held under the provisions of this part, and may assess a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation of this part or the rules promulgated hereunder.

(b) The provisions of the uniform administrative procedures act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this part.

(c) If an exhibitor's registration is suspended or revoked, then the exhibitor shall cease performing displays immediately. If an exhibitor's registration is revoked for any reason, then such exhibitor is prohibited from

applying for a new registration for one (1) year from the date of revocation. Upon a finding that an exhibitor's federal license, if applicable, has been revoked, the state fire marshal shall revoke such exhibitor's state registration. An exhibitor's registration that has been invalidated solely for failure to have the required insurance may be reinstated upon proof by such exhibitor that the required insurance has been obtained.

§ 68-104-206.

(a) Each exhibitor registration shall expire on the last day of the twenty-fourth month following its issuance or renewal, and shall become invalid on such date unless renewed. Each such registration issued shall contain a distinct number assigned to the particular exhibitor.

(b) Each operator certification shall expire on the last day of the twenty-fourth month following its issuance or renewal, and shall become invalid on such date unless renewed. Each such certification issued shall contain a distinct number assigned to the particular operator.

(c) To renew certification, an individual must provide proof to the state fire marshal that such individual has attended at least six (6) hours of continuing education training meeting the approval of the state fire marshal in the desired areas of certification during the two-year certification period, and must pay applicable certification fees.

(d) Renewal notices shall be mailed ninety (90) days prior to the expiration date of the registration. Such renewal must be received in the office of the state fire marshal prior to the expiration of the registration.

(e) The fee to be paid for the renewal of a registration or certification after the expiration date shall be increased to one and one-half times the normal fee, if received within ninety (90) days of the expiration of the registration or

certification. No exhibitor or operator shall be qualified to receive a renewal registration or certification when such exhibitor or operator has been in default in complying with the provisions of this part for a period of ninety-one (91) days or more, and, in such event, the exhibitor or operator, in order to qualify under the law, shall make a new application as in the case of the issuance of the original registration or certification.

§ 68-104-207. Any person who is a certified or licensed operator in another state where the qualifications, in the opinion of the state fire marshal, are equivalent to those prescribed in the state of Tennessee at the date of application, and where reciprocal certification or licensing privileges satisfactory to the state fire marshal are granted to Tennessee certified operators, may be granted a certification without an examination, upon the payment of a fee. All other applicable certification provisions apply to the out-of-state operator, and applicants for whom the written examination is waived must comply with all other requirements, including continuing education requirements.

§ 68-104-208.

(a) It is an offense for any person or entity to perform an outdoor display using display fireworks, an indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks, as defined by 49 C.F.R. § 173.52, or articles pyrotechnic, or an indoor or outdoor display using flame effects without an appropriately certified operator on the scene of the display to supervise during the preparation for the display, during the display, and immediately after the display until the site is released.

(b) It is an offense for any exhibitor or certified operator to conduct or perform an outdoor fireworks display except in accordance with NFPA 1123, 2000 edition.

(c) It is an offense for any exhibitor or certified operator to conduct or perform a proximate pyrotechnic display except in accordance with NFPA 1126, 2001 edition.

(d) It is an offense for any exhibitor or certified operator to conduct or perform a flame effect display except in accordance with NFPA 160, 2001 edition.

(e) A violation of this section is a Class B misdemeanor.

(f) Notwithstanding any provision of the law to the contrary, any municipality may adopt the provisions of subsections (a) through (e) by reference or substantial duplication as an ordinance violation.

(g) The provisions of subsection (a) through (e) shall not apply to individuals employing 1.4G consumer fireworks (formerly DOT Class C), as defined by 49 C.F.R. § 173.52, for their personal use.

§ 68-104-209.

(a) Nothing in this part shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations promulgated by the state fire marshal. Such items of fireworks which are to be used for public display only and which are otherwise prohibited for sale and use within this state shall include display shells designed to be fired from mortars and display set pieces of 1.3G fireworks (formerly D.O.T. Class B), as defined by 49 C.F.R. § 173.52, and shall not include such items of commercial fireworks

as cherry bombs, tubular salutes, repeating bombs, aerial bombs and torpedoes. Public displays shall be performed only under competent supervision, and after the persons or organizations making such displays shall have applied for and received a permit for such displays issued by the state fire marshal. Applications for permits for such public displays shall be made in writing at least ten (10) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it is not hazardous to property and that it shall not endanger human lives. If the display is to be performed within the limits of a municipality, then the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of such municipality. If the display is to be performed within the limits of a county, but outside the limits of a municipality, then the application shall so state and shall bear the signed approval of the chief supervisory law enforcement and fire department officials of such county, or such officials' designee. The chief supervisory law enforcement and fire department officials of such county, or such officials' designee, shall have the authority to demand all necessary documentation to ensure that the permittee has a fire suppression vehicle or firefighter at the site of the fireworks display as required by this part. Such documentation does not have to be submitted to the department. The applicable law enforcement or fire department official who issues approval of the fireworks display pursuant to this section shall determine how many firefighters are required for such fireworks display. Permits issued shall be limited to the time specified therein, and shall not be transferable. Possession of special fireworks for resale to holders of a

permit for a public fireworks display shall be confined to holders of a distributors permit only.

(b) The permittee conducting an outdoor public display of fireworks shall have at least one (1) fire suppression vehicle with the necessary personnel on site during such outdoor display. The permittee shall be responsible for all costs associated with the fire suppression vehicle.

(c)

(1) The permittee conducting an indoor public display of fireworks shall have at least one (1) trained firefighter on site during such indoor display. The trained firefighter may be a volunteer firefighter. The permittee shall be responsible for all costs associated with the trained firefighters.

(2) Immediately before the start of the program that includes the use of indoor fireworks, the owner of the building or the authorized representative of the owner, shall orally notify attendees of the location of all exits from the building to be used in the event of a fire or other emergency.

(3) At least two (2) working fire extinguishers shall be in the area where the fireworks are to be employed.

(4) In any building in which indoor fireworks are to be employed, signs designating the location of all emergency exits shall be posted in each restroom that is available to the public.

§ 68-104-210. The state fire marshal shall collect a permit fee from or on behalf of the sponsor for each event at which there will be a display, which may include all or any of the types of displays regulated by this part. A permittee,

which may include an exhibitor, sponsor, or operator, conducting multiple essentially identical displays at a single location may be issued a multiple display permit. The state fire marshal shall set by rule and collect a multiple display permit fee from or on behalf of the sponsor of an event. A multiple display permit expires one (1) year after issuance.

§ 68-104-211.

(a) It is an offense for a person or entity to store fireworks or pyrotechnical materials, or both, in any manner other than as provided in NFPA 1124, 2003 edition, and any applicable federal, state, and local laws or ordinances.

(b) A violation of this section is a Class B misdemeanor.

§ 68-104-212. The state fire marshal shall administer and enforce the provisions of this part and may call upon any state, county, or municipal officer or employee for assistance. The state fire marshal may promulgate rules to carry out the responsibilities of the state fire marshal under this part, including rules relative to:

- (1) Licensing of exhibitors;
- (2) Certification of operators;
- (3) Training;
- (4) Examinations;
- (5) The responsible handling of display fireworks, proximate displays, and flame effect displays; and
- (6) Other reasonable rules the fire marshal deems necessary to implement this part.

§ 68-104-213. This part does not affect the validity of any municipal ordinance further regulating or restricting outdoor displays using display

fireworks, indoor or proximate pyrotechnics displays, or indoor or outdoor displays using flame effects.

§ 68-104-214. A fireworks advisory council is hereby created and shall consist of nine (9) members. The state fire marshal shall appoint the members of the advisory council. Members shall serve without compensation. One (1) member shall be a municipal fire chief chosen from a list of nominees submitted by the Tennessee Fire Chiefs Association, and one (1) member shall be a local fire marshal. One (1) member shall be from the state fire marshal's office. One (1) member shall be an interested citizen. Five (5) members shall be appointed from the consumer fireworks, display fireworks, and proximate pyrotechnics and flame effects industry. The term of a member is two (2) years or until the member's successor is appointed and qualified. The council shall meet at least two (2) times each calendar year. Each year the council shall, on its own, elect a chair who will conduct the meetings of the council. Special meetings may be called at any time by the chair or in writing by any three (3) members. The council shall adopt rules of order that govern its proceedings. The council shall assist the state fire marshal in developing reasonable policies and regulations that will protect the public safety while promoting efficiency and effectiveness. The council may suggest legislative changes for the same purposes. The state fire marshal may remove any member of the council for misconduct, incompetence, nonparticipation, or willful neglect of duty.

SECTION 2. Tennessee Code Annotated, § 68-104-102, is amended by deleting subsection (d) and by substituting the following:

- (d) The state fire marshal shall charge the following fees for permits:
 - (1) Manufacturer..... \$1,000
 - (2) Distributor..... \$1,000

(3) Retailer.....	\$1,000
(4) Wholesaler.....	\$1,000
(5) Seasonal retailer.....	\$ 100
(6) Exhibitor.....	\$1,000

SECTION 3. Tennessee Code Annotated, Section 68-104-101, is amended in subdivision (a)(1) by deleting the semicolon at the end of the subdivision and by adding the following:

. The word “distributor” also includes any person engaged in the business of making sales of display fireworks as defined in §68-104-202 or proximate pyrotechnics or flame effect materials to licensed exhibitors for the purpose of providing fireworks, pyrotechnic, or flame effect display services in this state. A distributor may sell display fireworks, proximate pyrotechnics, or flame effect materials only to holders of a Tennessee exhibitor’s permit or registration. An out-of-state distributor will not be required to obtain a Tennessee permit when selling exclusively to a holder of a Tennessee manufacturer’s, distributor’s, wholesaler’s or exhibitor’s permit or registration;

SECTION 4. Tennessee Code Annotated, Section 68-104-107, is amended by deleting such section in its entirety.

SECTION 5. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 6. Tennessee Code Annotated, Section 4-29-230(a), is amended by adding a new subdivision thereto, as follows:

() Fireworks advisory council, created by § 68-104-214;

SECTION 7. For the purposes of promulgating rules, including promulgating rules by public necessity, conducting necessary examinations, issuing licenses and certificates, and making appointments to the advisory council, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect August 1, 2007, the public welfare requiring it. Licenses and certificates issued before August 1, 2007, pursuant to this act shall have August 1, 2007, as the issuance date.